## In the United States Court of Federal Claims

# OFFICE OF SPECIAL MASTERS No. 16-1535V

Filed: September 21, 2017
UNPUBLISHED

EDITHE SWENSEN.

Petitioner.

٧.

SECRETARY OF HEALTH AND HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU); Damages Decision Based on Proffer; Influenza (Flu) Vaccine; Shoulder Injury Related to Vaccine Administration (SIRVA)

Bruce W. Slane, Law Office of Bruce W. Slane, P.C., White Plains, NY, for petitioner. Amy P. Kokot, U.S. Department of Justice, Washington, DC, for respondent.

### **DECISION AWARDING DAMAGES**<sup>1</sup>

### Dorsey, Chief Special Master:

On November 17, 2016, Edithe Swensen ("petitioner") filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,<sup>2</sup> (the "Vaccine Act"). Petitioner alleged that her receipt of an influenza ("flu") vaccine on November 24, 2015, caused her to suffer a left-sided shoulder injury related to vaccine administration ("SIRVA"), as well as "tendinitis, impingement, infraspinatus tendinopathy, superior labrum tear, and subdeltoid bursitis." Petition at 1. The case was assigned to the Special Processing Unit ("SPU") of the Office of Special Masters.

On June 19, 2017, the undersigned issued a ruling on entitlement, finding petitioner entitled to compensation for a SIRVA. On September 21, 2017, respondent filed a proffer on award of compensation ("Proffer") indicating petitioner should be

<sup>&</sup>lt;sup>1</sup> Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

<sup>&</sup>lt;sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

awarded \$85,000.00. Proffer at 1. In the Proffer, respondent represented that petitioner agrees with the proffered award. *Id.* Based on the record as a whole, the undersigned finds that petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, the undersigned awards petitioner a lump sum payment of \$85,000.00 in the form of a check payable to petitioner, Edithe Swensen. This amount represents compensation for all damages that would be available under § 300aa-15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.<sup>3</sup>

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey

Chief Special Master

<sup>&</sup>lt;sup>3</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

# IN THE UNITED STATES COURT OF FEDERAL CLAIMS OFFICE OF SPECIAL MASTERS

	)	
EDITHE SWENSEN,	)	
	)	
Petitioner,	)	
	)	No. 16-1535V (ECF)
V.	)	Chief Special Master Dorsey
	)	
SECRETARY OF HEALTH AND	)	
HUMAN SERVICES,	)	
	)	
Respondent.	)	
	)	

#### RESPONDENT'S PROFFER ON AWARD OF COMPENSATION

### I. Compensation for Vaccine Injury-Related Items

On June 19, 2017, Chief Special Master Dorsey issued a Ruling on Entitlement finding that petitioner was entitled to vaccine compensation for her Shoulder Injury Related to Vaccine Administration ("SIRVA"). Based on the evidence of record, respondent proffers that petitioner should be awarded \$85,000.00. This amount represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

#### II. Form of the Award

Respondent recommends that the compensation provided to petitioner be made through a lump sum payment of \$85,000.00 in the form of a check payable to petitioner.<sup>1</sup> Petitioner agrees.

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

Should petitioner die prior to the entry of judgment, respondent reserves the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, future pain and suffering, and future lost wages.

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

C. SALVATORE D'ALESSIO Acting Director Torts Branch, Civil Division

CATHARINE E. REEVES Deputy Director Torts Branch, Civil Division

ALEXIS B. BABCOCK Assistant Director Torts Branch, Civil Division

s/Amy P. Kokot AMY P. KOKOT Trial Attorney Torts Branch, Civil Division U.S. Department of Justice P.O. Box 146 Ben Franklin Station Washington, DC 20044-0146 Tel: (202) 616-4118

Dated: September 21, 2017